IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 121 of 1982
With
FIRST APPEAL No. 296 of 1982
With
FIRST APPEAL No. 297 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KRUPA PETROLIUM SERVICES & 2 - Appellant(s)
Versus
KAMAL MANGALDAS & 3 - Defendant(s)

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Appearance :
MR PV HATHI for Appellant(s) : 1 - 3.
MR DEVAN M DESAI for Defendant(s) : 1 - 2.
MR BHAVNESH J JOSHI for Defendant(s) : 1,
MR MB BUCH for Defendant(s) : 2,
NOTICE SERVED for Defendant(s) : 3,
MR SB VAKIL for Defendant(s) : 4,
MS ARCHANA R ACHARYA for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/08/2006

ORAL JUDGMENT

1. As all these three appeals are arising out of the common judgment and decree passed by the learned City Civil Court at Ahmedabad dated 27-7-1981 passed in Civil Suit No.401 of 1974, they are being disposed of by this common order.

2. All these three appeals are filed by the respective defendants of Civil Suit No.401 of 1974 challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 27-7-1981 in Civil Suit No.401 of 1974 with respect to respective directions issued against the respective defendants. By aforesaid judgment and decree, while relying the aforesaid civil suit, the learned trial Court permanently restrained the original defendant Nos.3 to 5 from constructing or causing to be constructed any shed, garage or structure in any type for being used for either as a work shop or as a motor garage and from constructing any sheds *kachha* or *pakka* in the margin land in the suit plot of the land. Original defendant Nos.3 to 5 were also further directed by the decree of mandatory injunction to remove all the *kachha* sheds, except *kachha* shed admeasuring 60 feet X 12 feet in the rear portion towards the eastern side in the suit

plot of the land for being used for minor repairs. It was also permanently restrained from using any portion of the suit plot of the land for major repair works to the motor vehicles and for being used as a work shed or a garage. By the aforesaid decree, the respondent No.2 was directed to make known the judgment and decree to a dealer other than defendant Nos.3 to 5 as and when appointed in future.

3. Respondent No.2 Bharat Refineries (now known as Bharat Petroleum) was having petrol pump (service station) on the suit plot and original defendant No.3 Krupa Petroleum Services was its dealer. It is reported that during the pendency of the present appeals, original defendant No.2 has now purchased the suit plot and has become the absolute owner of the suit land. It is required to be noted that during the pendency of the aoresaid suit, the pursis at Exh-118 was filed by original defendant Nos. 3 to 5 and the said pursis was given by defendant No.4 stating that the defendants did not want to make use of the suit land for

1.Work of a black smith

2.Horn repairs

3.Welding work

4.Repairing of silencer by welding work

5.Keeping electric lights of the height upto 10 fit in the rear portion of the suit plot of land.

4. Today, when all these appeals are heard finally, Shri PV Hathi, learned advocate appearing for Krupa Petroleum Services – original defendant No.3, Ms Archana Acharya, learned counsel appearing for Bharat Petroleum – original defendant No.2 and Shri Deven Desai, learned advocate appearing for Kamal Mangaldas and Pankaj Natwarlal Mehta, original plaintiffs.

5. Shri Hathi has produced on record one communication dated 24-8-2006 by the partner of Krupa Petroleum Services addressed to him informing him that the Krupa Petroleum Services agree that they are not interested neither will execute any work on following manner at the site;

1.Work of a black smith

2.Welding work

3.Repairing of silencer by welding work

4.Horn repairs that makes any noise

6. Said communication dated 24-8-2006 is directed to be

taken on record and Krupa Petroleum Services, original defendant Nos.3 to 5 are directed to act accordingly.

7. Ms Archana Acharya, learned advocate appearing on behalf of the Bharat Petroleum has submitted under the instruction from one Shri RV Suthar, Legal Officer of Bharat Petroleum, who is personally present in the Court, that BPCL had plans to renovate the full petrol pump site shortly and the revised plans for the same have already been submitted to the Ahmedabad Municipal Corporation for necessary approvals and the existing service station area will thus get removed from the site and the BPCL will take up the renovation work upon receipt of all the approvals. It is also made clear that as per the revised plan submitted to the Corporation and on getting it sanctioned, the existing service station/garage will be removed. In view of the above so far as the writing in question submitted for and on behalf of the Krupa Petroleum Services dated 24-8-2006 and the above assurance submitted through Shri Hathi, would be till the plans are approved and new construction is carried out. Naturally, thereafter there is no question of using the said place for service station and/or garage and/or such like use and to use it for any work as suggested

hereinabove. Shri Deven Desai, learned advocate appearing on behalf of the plaintiffs under the instruction from Shri Kamal Mangaldas, one of the original plaintiffs, who is also personally present in the Court, has submitted that the original plaintiffs would be satisfied with the above. Parties are directed to act accordingly. In view of the above, all the present appeals are disposed off accordingly. No costs.

(M.R.SHAH,J.)

shekhar/-